

REMARKS

A. **THE 35 U.S.C. §103 REJECTIONS**

(i) Claims 1, 3, 4, 8-12, 20, 22, 23, 27-29, 37, 41, 42 and 47-49

Claims 1, 3, 4, 8-12, 20, 22, 23, 27-29, 37, 41, 42 and 47-49 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lyer et al., U.S. Patent No. 6,295,450 (“Lyer”) in view of U.S. Patent Publication No. 2002/0150063 to Tran. Applicants respectfully disagree and traverse these rejections for at least the following reasons.

In the Office Action the Examiner acknowledges that “Lyer doesn’t teach specifically[sic] of measuring real time traffic flow criteria for setting a number of base station and utilizing the real time flow criteria for setting number of base stations [sic].” To make up for this deficiency, the Examiner now relies on Tran.

Claims 1, 3, 4, 8-12, 20, 22, 23, 27-29, 37, 41, 42 and 47-49 each include the feature of measuring real-time traffic flow criteria associated with one or more base stations. Such a measurement is nowhere to be found in Tran. In the Office Action the Examiner appears to be equating Tran’s use of a “traffic indicator” with the claimed measurement of real time traffic flow. This is incorrect.

Tran’s traffic indicator is based on “the number of devices [i.e., mobile devices] that have traffic pending at the base station” (see Tran paragraph [0018]). Tran’s indicators do not take into account the amount of real time traffic flowing into, and out of, a base station from such mobile devices.

Accordingly, because the combination of Lyer and Tran do not teach or disclose the measurement of real time traffic flow, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 1, 3, 4, 8-12, 20, 22, 23, 27-29, 37, 41, 42 and 47-49.

(ii) **Claims 2, 5-7, 13-15, 21, 24-26, 30-32 and 38-40**

Claims 2, 5-7, 13-15, 21, 24-26, 30-32 and 38-40 were rejected under 35 U.S.C. § 103(a) based on a combination of Lyer, Tran and Celedon et al., U.S. Patent Publication No. 2003/0190916 ("Celedon"). Applicants respectfully disagree and traverse these rejections for at least the following reasons.

Initially, Applicants note that claims 2, 5-7, 13-15, 21, 24-26, 30-32 and 38-40 depend on either claims 1, 11, 20, 28 or 37 and are, therefore, patentable over the combination of Lyer, Tran and Celedon for the reasons set forth above and because Celedon does not make up for the deficiencies in Lyer and Tran.

Rather than disclose or suggest the measurement of real-time traffic flow criteria associated with base stations, Celedon appears to disclose the use of non-real time information (See paragraph [0022], "Generally, measurements are stored and available in an MSC to use in determining the necessity for removing or adding a particular cell in a neighbor list.").

(iii) **Claims 16-19, 33-36 and 43-46**

Claims 16-19, 33-36 and 43-46 were rejected under 35 U.S.C. § 103(a) based on a combination of Lyer, Celedon and Hellander, U.S. Patent No. 6,445,918 ("Hellander"). Applicants respectfully disagree and traverse these rejections for at least the following reasons.

In the Office Action the Examiner admits that neither Lyer nor Celedon teach "measuring, in real time, traffic flow criteria related to a wireless network." To make up for this deficiency the Examiner relies on Hellander.

Initially, Applicants note that claims 1, 3, 4, 8-12, 20, 22, 23, 27-29, 37, 41, 42 and 47-49 also contain a similar feature and, therefore, are patentable over Lyer and Celedon for the reasons set forth above and because the Examiner has acknowledged as much in the arguments rejecting claims 16-19, 33-36 and 43-46.

Further, Applicants note that Hellander does not make up for the deficiencies of Lyer or Celedon. Instead of disclosing or suggesting the measurement of real-time traffic flow criteria associated with base stations Hellander appears to disclose “previously performed mobile-assisted handoff measurements” to reconnect dropped calls; such measurements are not based on real-time traffic flow criteria.

Accordingly, because none of the combination of references cited by the Examiner suggests the measurement of real-time traffic flow criteria, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 2, 5-7, 13-15-19, 21, 24-26, 30-32, 33-36 and 43-46.

CONCLUSION

Applicants respectfully request reconsideration, withdrawal of the pending rejections and allowance of claims 1-49.

In the event this Request does not place the present application in condition for allowance, Applicants request that the Examiner contact the undersigned at (703) 266-3330 to schedule a personal interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC.

By //John E. Curtin//
John E. Curtin, Reg. No. 37,602
P.O. Box 1995
Vienna, Virginia 22183
(703) 266-3330